18

A Word in Season, to prevent Undue Elections and Returns of Members of Parliament: *Wherein the Method to be Observed, according to L A W, is Prescribed, and several Illegal Practices Reform'd, and several Clauses of Statutes relating thereunto, Cited and Explained.*

03,14

IN such a Crisis of Time as this, wherein both our Civil Liberties and Religion are at Stake, and must certainly Stand or Fall together, I thought I could not do a greater Service to the Publick, than to offer some Remedies, which might prevent the Fatal Consequences of Undue Elections and Returns, especially since the great Design of the Adversaries of our Religion, upon which they lay their whole Stress, and have used their utmost Efforts, for these two Years last past, appears to be the framing of such a *Parliament*, as might make Way for the Change of our Religion; to compass which, they have used such Unheard of Methods, and practised such open Violations upon the Rights and Freedoms of *Parliaments* and *Elections*, as no Age can parallel, without any colour of *Law* or *Precedent*.

For the Demonstration of which, it shall suffice to give these few Instances.

Not to insist upon the *Quo Warranto's* brought, and Judgments given thereupon, against the Charter of *London*, and other Places, at the latter end of the late King's Time, with the Methods taken to procure Surrenders from Cities and Corporations, with the Exhorbitant Fines imposed upon the Rioters of *London*, at the Election, and the framing of Courts, Juries, and Sheriffs to this purpose, which yet had been done in the forms, and under the countenance of *Law*, and therefore are only fit for the Consideration of a *Parliament*, together with that Proviso introduced into all the New Charters, wholly inconsistent with the Nature of a Corporation, wherein every man hath a Freehold, and the Corporation itself a Perpetuity of an Inheritance, and which manifestly Subverts all the Right and Freedom of Elections, not only of the Members of the Corporation, but of their Representatives in *Parliament*, and have not yet the countenance of one Precedent or Judgment of any Court; and therefore it is hoped, will be declared Illegal and Void, by the next succeeding *Parliament*: All which matters have been strangely Improved and Extended by the Ministers, in the Reign of his present Majesty, as might be easily Demonstrated; but I shall only fix upon such things as have been lately practiced, which come within the former Rule, *Of being without the Colour of Law, or Precedent*.

First, First and before all, that Method of Testing all the Officers in the Kingdom, from the highest to the lowest, with these three Questions, and Turning Out all such as refused to comply, 1st, *Whether, if they were Chosen to be Members of Parliament, they would give their Voice, to Repeal the Penal Laws and Test?* Directly opposite to the Right and Freedom of *Parliaments*, and the Duty of the Members thereof. 2dly, *Whether they would give their Voices to*

Elect such as would Repeal the Penal Laws and Test, in Subversion of the Right of Election, and Freedom of Members? 3dly, *Whether they would stand by the King's Declaration*; wherein the King Assumes to himself to Suspend all these Laws, without Limitation of Time or Persons?

Secondly, The underhand Imposing upon the Clergy, to Address for, and then publickly, by order, to Read the Declaration, and the Proceeding against the Bishops for not concurring therein, and against the Body of the Clergy that refused to comply therewith.

Thirdly, The Testing the Corporations by Addresses and otherwise, to promise to Elect such Members as should be for taking off the *Penal Laws* and *Test*, when the King should please to call a *Parliament*, and the turning out all such, from time to time, as refused.

Fourthly, The Imposing Charters upon several Burroughs, in *Cornwal* and *Devon*, and elsewhere, before the Election of the last *Parliament*, without Petition, and taking away the Right of Election from the generality, and restraining it to a few, which hath also been endeavoured upon other Burroughs since.

Fifthly, Procuring an Order to be entered in most of the Cinque Ports, That the King should have the Nomination of one Member.

Sixthly, Appointing a Committee or Commission, consisting for the most part of *Roman Catholicks*, both Lords and others, publickly to Meet twice or thrice a Week, to Consult about the Method of framing a *Parliament* to these Ends, and give out Orders for the same, and especially for the Regulating Corporations, as it is called, and imploying Commissioners into all Counties under them.

Seventhly, The Nominating many Lord Lieutenants, Sheriffs, Mayors, and Bailiffs, profest *Roman Catholicks*, and the generality of the rest, such as by reason of their Dependance upon the Court, Indigence of their Fortunes, or Obnoxiousness to the *Laws*, have contrary to their Duties, given an Assurance to promote such Elections.

I have mentioned these, only to shew the great Necessity incumbent upon every good *English-man* and *Protestant*, however differing in Opinion as to some Religious Matters, to use their utmost Endeavours upon the approaching Election, to oppose and prevent all further Illegal Practices, either in the Election or Return: And the better to inable them, shall propose this following Method, as I conceive, undoubtedly warranted by *Law*.

I. That since by the Statute of *Westm.* 1 *C.* 5. it is declared, That all Elections ought to be Free; and the King forbids, under grievous Forfeitures, that no Great Man, nor other, by Power of Arms, or by Malice, or Threatnings, should disturb to make Free Elections: and by the Statute 7 *H.* 4. 15. it is declared, That Elections ought to be freely, indifferently, made without Request or Commandment: No Peer hath to do in the Election of the Commons,

mons, being no Suitour, or Summonable to the County Court, nor Contributary to the Ways for his Land; that therefore no City, Borough, or Corporation, or the Members thereof, or Electors for the County, do admit of any Recommendation, Requeſt, or Commandment from the King, or any Peer in Office, (who ought not by the *Law* to intermeddle in any of theſe Elections) or make any Promiſe to any of them, for the Choice of any Man, before ſuch Election, nor admit of the Preſence of any Lord-Leiutenant, or of any Military Officer or Souldier, not having Right to give a Voice to the ſaid Election, but to inſiſt upon it, that they withdraw.

II. That after the Writ or Precept Read, they cauſe to be Read the Statutes of 7 *H.* 4. 15. and 23 *H.* 6. 15. wherein the Manner is preſcribed for the Elections, both in Counties, Cities, and Burroughs, and that they both purſue and require of the Sheriff, and chief Officers, the Obſervation thereof, and not to permit or ſuffer any Deviation from the ſame.

III. That they do principally obſerve two things in the ſaid Statutes, 1ſt, That as well the Return as the Election of the Knights, is to be made at the next County-Court after the receit of the Writ, and the Sheriff not to Depart, or Diſſolve the Court till ſuch time as the Return be made. 2dly, That both the Election and Return is to be made by Indenture, which is to be Sealed by every one of the Electors, and the Duplicate by the Sheriff, and the ſuch Indenture ſhall be annexed to the Writ; and the ſuch Indenture is the Return of the Sheriff: So that the Return is in the Power of the Electors, and not of the Sheriff; the omiſſion of which Sealing the Indenture, at the time of giving in their Votes, by every Elector, which is the ſtanding Poll of the Election, by *Law*, and no other Poll required, hath given the opportunity to the Sheriff of practicing all the Partiality imaginable at Polls, and by Adjourning of the Court to remote Places and Inns, after the Election, which he cannot do without the Conſent of the Freeholders, by *Law*, unleſs in caſe of neceſſity, for want of Proviſions, or Sickneſs broke out in the place ſince the laſt Court, or the like, as alſo of the falſe and double Returns made by them. The Method therefore to be taken is this, not wholly refuſing the Poll, becauſe it hath been long practiced, and gives the Sheriff opportunity of examining as to 40 s. *per annum*, to prepare an Indenture, one part whereof to have ſeveral Skins of Parchment, to which (in caſe of Conteſt) either before or after the giving their Votes, every Elector ſhould ſet his Name or Mark and Seal, ſuch Sealing to be in the preſence of ſome intruſted therewith, who may teſtifie the ſame; and ſuch Seals to be dropt with hard Wax upon the Parchment, in rowes, with room to write the Names; which, at the end of the Election, with a Duplicate is to be preſented to the Sheriff, and he required to annex the ſame to his Writ, and if he refuſe ſo to do the ſame, they may juſtifie the detainlng him there till he comply; nor can he Adjourn or Diſſolve the Court till he hath performed the ſame, and ſealed a Duplicate thereof, there being no occaſion for ſuch an Ajournment; nor is he Judge of any Exception, but only hath Power to Examine upon Oath, as to the 40 s. *per annum*.

See alſo the Clauſe in the Writ, added by the Statute of 23. H. 6. 15.

IV. As

IV. As to Cities, Burroughs, and Towns Corporate, the like Method is to be obſerved in their Elections and Returns, and though it be not particularly expreſſed in the ſaid Statutes, as to the manner of their Election and Return, as in the Caſe of the Knights of the Shire, yet the conſtant Practice of making Return by Indenture, either under the common Seal of the Corporation, or Hands and Seals of the Electors, where no common Seal is, and annexing it to the Precept, and proceeding in the ſame manner by Votes and Poll, in caſe of a Conteſt, ſhews that this was the common *Law* and Cuſtom of *England*, before the making of the ſaid Statutes, and only re-inforced under Penalties by ſuch Statutes: and therefore the putting the Seal to this, and Annexing it to the Precept, and Indorſing by the Mayor, or other chief Officer, upon the back of the Precept, that the Return of this Precept, is in an Indenture thereto annexed, is the Duty of the Mayor, and what he may be compelled to do after the Election, before he Adjourn or Diſſolve the Court; and by a Clauſe in the Statute 23 *H.* 6. 15. it is declared, The Citizens and Burgeſſes as have always been Choſen by Citizens and Burgeſſes, and no other, and Returned to the Sheriff, and upon their Returns accepted and received by *Parliament*.

V. In caſe the Sheriff ſhall refuſe to annex ſuch Return and Precept to the Writ, for which end the Corporation ought to ſend ſome of their Number with the Mayor or chief Officer; they may do well to detain the Return, and not deliver it till the Parliament Sits; and in caſe of any doubt of the Practice of the Sheriff and Mayor, after the Return made in manner aforeſaid, they may keep the Return, and carry it in to the Sheriff, ſuch Indenture ſo annexed, being as well the Return of the Mayor, as in the County of the Sheriff.

VI. Whereas many Forreigners have been made Members of Corporations, which do not Live, nor Inhabit in the ſaid Corporations, 'tis humbly conceived, that no Votes in Election can belong to them; for that it appears not only by the Statute 1 *H.* 5. 1. and other Statutes that require the Electors to be Citizens and Burgeſſes of the ſaid Cities and Burroughs, that are reſiant on the Place, which thô it be Diſpenſed with as to the Perſons Elected, being only a prohibitory Clauſe, and not diſabling the Perſon to be Elected, or making the Election void, and that thoſe Acts were made upon Petition of the Gentlemen, not to be compelled to ſerve for Corporations, and ſo was granted to them as a Priviledge, if they would take advantage of it, but *Volenti non fit injuria*, yet was it never Diſpenſed with, as to the Electors in Counties, nor ought it to be ſo in Corporations or Burroughs; and that this is the Common Law of the Realm, appears by the Clauſe in the Statute 23 *H.* 6. 15. which after the recital of the Statute 1 *Hen.* 5. 1. declares, That the Citizens and Burgeſſes have always been Choſen by Citizens and Burgeſſes, and no other; and alſo, that even thoſe that have been real Citizens or Free-men, or Inhabitants of Corporations, as having been Apprentices there, yet when they live out of the ſaid Towns, cannot enjoy the Priviledges that are Granted to the ſaid Corporations, as in the famous Judgment in Prizage, as to the Citizens of *London*: which ſhews that the Priviledges are Local and not Perſonal; and thô they have been ſometimes admitted to give Votes, yet it is conceived, this is againſt Law, and cannot be defended.

VII. Where Sheriffs, Mayors, and other chief Officers have not taken the Teſt, and will not comply with the Law, to make due Elections and Returns, it is conceived, that they may be juſtly excepted againſt, and the Elections and Returns made without them; and that where any Burrough hath a Corporation lately put upon them, neither the Election nor Return is altered thereby, but ſhall belong to the Inhabitants and Bailiff of the Burrough as formerly, and not to the Mayor or Bailiff by Charter.

FINIS.

BIBL. CANT. ACAD.